# ORISSA HIGH COURT : CUTTACK

**W.P. (C) No. 4726 of 2003**

***In the matter of an application under Articles 226 and 227 of the Constitution of India.***

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Dr. Batakrishna Satapathy … Petitioner

Versus

State of Orissa and others … Opposite parties

***For petitioner*** - ***M/s. Manoj Mishra, P.K.Das, B.B.Mohanty and P.K.Nanda.***

***For opposite parties*** - ***Addl. Government Advocate M/s. S.K.Purohit and A.K.Das (for opp.party no. 5)***

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**P R E S E N T**

**THE HONOURABLE MR. JUSTICE S.K.MISHRA**

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***Date of hearing – 23.04.2012 : Date of judgment - 13.07.2012***

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***S.K.Mishra, J.*** In this writ petition, the petitioner prayed for grant of pension by counting the period he has worked in recognized educational institutions and for leave salary. He has also prayed for payment of differential arrear salary as per the revised scale of pay under the O.R.S.P. Rules, 2001.

2. The petitioner has served in different aided and recognized educational institutions for the period 26.08.1964 to 04.08.1979 and 10.12.1994 to 26.04.1999 in Sarawati Vidya Mandir, Damanjhodi, which is a recognized institute. On 15.04.1967 he was appointed as a Lecturer in F.M. College, Balasore by the Director. On 02.09.1969 he was appointed as Lecturer in Oriya in P.G. Department in Sambalpur University and served there till 04.08.1979,

when he joined in N.A.C. College, Burla as Principal. In between 04.08.1979 to 09.12.1994 and 28.04.1999 to 30.06.2002 he served as Principal in N.A.C. College, Burla. From 10.12.1994 to 26.04.1999, the petitioner has served as Principal in Saraswati Vidya Mandir, Damanjodi, which is a recognized educational institution. It is, therefore, claimed as per Rules 3 and 6 of Orissa Aided Educational Institution Employees Retirement Benefit Rules, 1981, (hereinafter referred as the "Retirement Rules" for brevity), the period of service of the petitioner working in aforesaid recognized educational institutions shall be computed for the purpose of retirement benefits.

3. In the counter affidavit filed by the opposite party no.2 on 27.03.2012, he has pleaded that the petitioner has worked in different educational institutions in different capacity, which is as follows:

(i) Nayagarh College as Lecturer from 26.08.1964 to 18.08.1966,

(ii) Rajstan College, Cuttack as Lecturer from 19.08.1966 to 18.04.1967,

(iii) F.M.College, Balasore and V.Dev College, Jeypur as lecturer from 19.04.1967 to 08.10.1969,

(iv) P.G. Department, Sambalpur University as lecturer from 10.10.1069 to 04.08.1979,

(v) Burla N.A.C. College as Principal from 04.08.1979 to 09.12.1994,

(vi) S.V.M. Damanjodi as Principal from 10.12.1994 to 26.04.1999 (as per deputation order of the Governing Body of Burla N.A.C. College), and

(vii) In Burla N.A.C. College as Principal from 28.04.1999 to 30.06.2002.

The opposite party further claimed that as per the scheme laid down in Rules 3 and 6(2) of the aforesaid Retirement Rules, there is no provision to provide pensionary benefit to the retired employees for his service rendered in recognized educational institutions, which do not come under the G.I.A. system. It is further pleaded that he has been given pensionary benefit for his valid and qualifying period of service rendered under the Burla N.A.C. College as per the aforesaid Rules. For the period 26.08.1964 to 04.08.1979 and 10.12.1994 to 26.04.1999, the

petitioner has claimed benefit under Rule 6(1) of the Retirement Benefit Rules, 1981. However, it is claimed by the opposite party that he is not entitled to receive pension for the past period of service from 26.08.1964 to 04.08.1979 and further period from 10.12.1994 to 26.04.1999.

4. The opposite party further pleaded that as Nayagarh College was recognized and came to direct payment system w.e.f. September, 1973, whereas the petitioner worked there from 26.08.1964 to 10.08.1966, he is not entitled to receive the pension as per rule 3 of the Pension Rules.

5. Similarly, the petitioner has served in Rajstan College, Cuttack, which is an unrecognized and unaided college, from 19.08.1066 to 18.04.1967 and during the period the direct payment system was not introduced for the employees of aided educational institutions. The period of services of the petitioner, therefore, do not qualify for pensionary benefit as per provision under Rule 3 of the said Rule. The petitioner has served in F.M. College, Balasore and V.Dev College, Jeypore for the period 19.04.1967 to 08.10.1969 on ad hoc basis. Both the colleges are Government Colleges and, therefore, not covered under the Retirement Rules, as there is no provision and Government instruction in force for counting the past ad hoc period services rendered in Government colleges for the purpose of pensionary benefits.

The petitioner has worked as Lecturer in Oriya and served in Sambalpur University, which is an autonomous institution for the period 10.10.1969 to 04.08.1979. After his appointment and joining in Burla N.A.C. College as Principal on 04.08.1979, his service under Sambalpur University ended w.e.f. 04.08.1979. As per provision under the Amendment Rules, 1998, which came into effect w.e.f. 16.09.1998, the period of qualifying service rendered by an employee under any non-Government Aided Educational Institutions affiliated to any University of the State shall count for the purpose of pension and gratuity in the event of his/her absorption in any University of the State. In this case, the petitioner has served as a Lecturer in the P.G. Department of Sambalpur University for certain period. Since he was not permanently absorbed in the University service being an ex-employee of any non-Government Aided College, his case for

pensionary benefit for University period service does not come under the Amendment Rules, 1998.

6. The petitioner served from 10.12.1994 to 26.04.1999 under Saraswati Vidya Mandir, Damanjodi after he is relieved from Burla N.A.C. college w.e.f. 09.12.1994 in pursuance of the decision of the general body. He was allowed to retain his lien for one year from the date of relief i.e. up to 10.12.1994, then the petitioner continued in S.V.M. College, Damanjodi till 26.4.1999 unauthorisedly without approval of the Government, for which the Government in his letter dated 17.03.2006 have disallowed the period 10.12.1994 to 16.04.1999 for regularization.

7. Regarding his pay fixation under the ORSP (for college teachers) Rule, 2001 w.e.f. 01.01.1996 in the Reader's scale as per Government letter No.8178/HE. dated 05.02.2002 is concerned, it is pleaded that the petitioner was not in service in Burla N.A.C. college and he was served under the NALCO Management in Saraswati Vidyamandir, Damanjodi for the period 10.12.1994 to 26.04.1999 without the approval of the Government, for which the said period has not been regularized. Therefore, it is pleaded that such being the case his pay fixation as a Reader w.e.f. 01.01.1996 is not justified and need rectification by the Government.

8. From the pleadings of the parties, the following question arises for determination in this case:

(i) Whether the petitioner is entitled to be given the benefit of qualifying service for the purpose of pension, he rendered in Nayagarh College and Rajstan College ?

(ii) Whether the petitioner is entitled to be given the benefit of the service, for the purpose of pension, he has rendered as Lecturer in F.M. College, Balasore and Bikramdev College, Jeypore between 19.04.1967 to 08.10.1969 ? Similarly, for the period he was working in P.G. Department of Sambalpur University from 10.10.1969 to 04.08.1979.

(iii) Whether he is entitled to be given the benefit for the qualifying service for the period he has worked as Principal of the S.V.M. College, Damanjodi from 10.12.1994 to 26.04.1999 ?

(iv) Whether he is entitled to receive the revised pay in the Reader's scale from 01.01.1996 ?

(v) Whether he is entitled to receive the arrear salary and the leave salary for 282 days ?

9. Coming to the last question, it is apparent from Annexure 9-A that the Governing Body of the N.A.C. College, Burla has taken a decision to grant E.L. for 64 days and 89 days for the period 16.08.2001 to 14.10.2001, 07.02.2002 to 10.02.2002 and 16.02.2002 to 15.05.2002. He has also been sanctioned with commuted leave for 115 days for the period 15.10.2001 to 06.02.2002. Therefore, the petitioner is entitled to salary for the said period.

10. As per the question no. (i) is concerned, since the petitioner was not working in a Government aided college i.e. Nayagarh College and Rajstan College, Cuttack, he is not entitled to the benefit for such period in his qualifying service for the purpose of pension.

11. In so far as the service rendered by the petitioner in F.M. College, Balasore and Vikramdev College, Jeypore as Lecturer is concerned, the period is not covered under Rules 3 of the Rules, 1981.Rule 3 of the Rules reads as follows:

> "3. **Application of the rules.-** These rules shall apply to the teaching and non-teaching staff of all recognized non-Government Colleges High Schools, Senior Basic Schools and M.E. Schools which come under the direct payment system and all non-Government Primary Schools including Sanskrit Tols and Junior Basic Schools fully aided by Government in Education and Youth Services Department directly or through Panchayat Samitis constituted under the Orissa Panchayat Samiti Act, 1959 or through a Notified Area Council or Municipality constituted under the Orissa Municipal Act, 1950;
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> Provided that Government may, by General or special order as may be issued in that behalf, specify and other educational

> institution or category of institutions and the staff working therein to whom the rules shall apply."

From the above rules it is clear that a Lecturer who has served both in aided college as well as Government college and retires from an aided college, is not entitled to the benefit of the period of service he has rendered in a Government college, for the purpose of calculating pension under the Retirement Benefit Rules. It is discriminatory and is violative of Article 14 of the Constitution. The appointments are being made by the Higher Education Department and in pursuance to the order passed by the Higher Education Department, the lecturers or teachers are given appointment either temporarily or on ad hoc basis in Government Colleges. Therefore, the lecturers should be entitled to receive pension for that period. The Stage Government does not deny that such period the petitioner served in a Government educational institution will not be taken into consideration for calculating pension meant for lecturer of Government colleges. However, in case a lecturer is posted in both Government colleges and aided institutions, anomaly arises if he has not completed requisite number of qualifying years of service in one college or the other. But if both the services in Government Colleges and as well as aided colleges are taken together, he is entitled to receive pension. This anomaly can be rectified by amending Retirement Benefit Rules, 1981.

12. Similar is the case of his service rendered as a lecturer in Sambalpur University. It is stated that as per provisions under the OAEIERB (Amendment) Rules, 1998, which came into force w.e.f. 16.09.1998, the period of qualifying service rendered by an employee under any non-Government Aided Educational Institutions affiliated to any University of the State shall be counted for the purpose of pension and gratuity in the event of his/her absorption in any University of the State. Note 5 to Rule 4 of the Retirement Benefit Rules, 1981 reads as follows:

> "**Note 5** – The period of qualifying service rendered by an employee under any non-Government Aided educational Institution affiliated to any University of the State shall count for the purpose of pension and gratuity in the event of his/her absorption in any of the universities of the State or in any organization under the control and management of the State government and the State Government shall bear liability only for

> the period of service of the employee rendered against any approved post in such Institution."

The aforesaid note in effect lays down that in case of his absorption, the period of service rendered shall be eligible for the qualifying service and the State Government shall bear the liability only for the period the employee rendered service against any approved post in such institution. So the natural corollary to the aforesaid note is that in case the employee is not absorbed in the University and he has not rendered service against any approved post in such institution, the then the Government shall not bear the liability and he is entitled to receive pension under the Retirement Benefit Rules, 1981. It is settled that the pension is not a bounty, it is a right an employee has acquired by virtue of rendering service for a number of years. If the State or the instrumentalities of the State have taken the service of an employee, by transferring him to an organization where he was not absorbed, as in this case has happened, the petitioner is not at fault and the State is bound to provide pension for the said period. Accordingly, the period of service rendered as Lecturer in Oriya in Sambalpur University shall be calculated as qualifying service for the purpose of pension.

13. The plea of the opposite parties regarding fixation of salary of the petitioner on 01.01.1996 is concerned, it is seen that the petitioner was working as a Principal of Saraswati Vidya Mandir, Damanjodi under the NALCO Management. Thereafter, he stayed there till 26.04.1999. His right to revised scale of pay under ORSP Rules as College teacher has been denied on the ground that the petitioner was not in service in Burla N.A.C. College and he has served in Saraswati Vidya Mandir, Damanjodi without the approval of the Government. However, it is seen that firstly, the Saraswati Vidya Mandir, NALCO, Damanjodi has been recognized under Section 6(8) of the Orissa Education Code, 1969 as per letter No.XE(+2) 231/91, which has been communicated to the Director of Secondary Education as per Memo No.59 HE 781(3)/Edn. dated 23.12.1990. Secondly, it is noted that the services of the petitioner as the Principal of N.A.C. College, Burla was not approved initially, but later on as per the orders passed by this Court in O.J.C. No.2878 of 1992

his appointment in the N.A.C. College, Burla has been accorded for approval w.e.f. 04.08.1979. Thus, the continuance of the petitioner in Saraswati Vidya Mandir, NALCO, Damanjodi was not intentional and only on the intervention of this Court, his appointment as Principal in the aforesaid college was approved. Therefore, this Court is of the considered opinion that the petitioner is entitled to revised pay scale in the Readers scale under the ORPS Rules from 01.01.1996. However, he is not entitled to the benefit of the period rendered by him in Saraswati Vidya Mandir, Damanjodi towards qualifying service for the purpose of pension.

14. On the basis of the aforesaid discussion, the writ application is allowed with the following direction:

(1) While calculating the qualifying service of the petitioner for the purpose of pension, the service rendered by him in F.M. College, Balasore, Bikram Dev College, Jeypore and in P.G. Department of Sambalpur shall be taken into consideration and accordingly pension shall be fixed.

(2) It is further directed that the opposite party no.1 shall issue appropriate direction to include the services rendered by a Lecturer in a Government College, who has initially been appointed in an aided college and again retransferred to an aided college, under the provisions of the Orissa Aided Educational Institution Employees Retirement Benefit Rules, 1981.

(3) The salary of the petitioner shall be revised under the ORPS (for college teachers) Rules, 2001 w.e.f. 01.01.1996 in the Reader's scale and the differential salary shall be paid to him within a period of three months from the date of communication of this order.

(4) The petitioner shall be paid leave salary for 282 days within a period of three months. No cost.

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***S.K.Mishra, J.***

Orissa High Court, Cuttack,
Dated, July 13, 2012/JNSahu